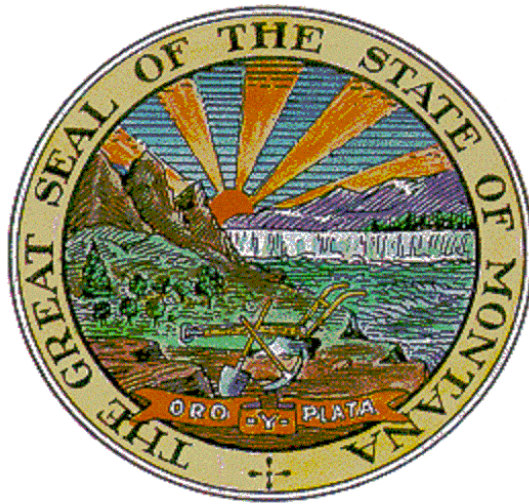


State of Montana
Department of Labor and Industry
Business Standards Division

BOARD STATUTES RELATING TO REALTY REGULATION



ISSUED BY:

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**TITLE 2
CHAPTER 15
PART 17**

2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members must be licensed real estate brokers or salespeople who are actively engaged in the real estate business as a broker or salesperson in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker or salesperson. The members must be residents of this state.

(3) Not more than three members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in [2-15-121](#).

History: En. Sec. 1, Ch. 497, L. 1979; MCA 1979, ; redes. by Sec. 4, Ch. 274, L. 1981; amd. Sec. 6, Ch. 52, L. 1993; Sec. , MCA 1999; redes. by Sec. 221(2), Ch. 483, L. 2001.

**TITLE 37
CHAPTER 51
PART 1 – 6**

Part 1 -- General

37-51-101. Repealed.

37-51-102. Definitions.

37-51-103. Exemptions.

37-51-104. Chapter supplemental to deceptive practices law.

37-51-105. Sexual or violent offender registration information -- responsibility of broker or salesperson.

Part 2 -- Board of Realty Regulation

- 37-51-201. Chairman -- seal -- records -- prohibition on membership in real estate associations.
- 37-51-202. General licensing power.
- 37-51-203. Rulemaking power.
- 37-51-204. Educational programs.
- 37-51-205. Compensation of members -- expenses.
- 37-51-206. Repealed.
- 37-51-207. Schedule of fees.
- 37-51-208. Deposit of money not otherwise provided for.
- 37-51-209. Executive secretary -- hiring and duties.

Part 3 -- Licensing

- 37-51-301. License required -- limited to persons.
- 37-51-302. Broker or salesperson license -- qualifications of applicant.
- 37-51-303. Broker or salesperson examination.
- 37-51-304. Repealed.
- 37-51-305. License -- delivery -- display -- pocket card.
- 37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons -- consent to legal process.
- 37-51-307. Repealed.
- 37-51-308. Broker's office -- notice to department of change of address.
- 37-51-309. Broker -- salesperson -- personal transactions of salesperson -- notice to department of change of association.
- 37-51-310. Repealed.
- 37-51-311. Fees -- deposit of fees.
- 37-51-312. No taxation by municipality.
- 37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller.
- 37-51-314. Relationship disclosure requirements.
- 37-51-315. Vicarious liability.
- 37-51-316 through 37-51-320 reserved.
- 37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.
- 37-51-322. Repealed.
- 37-51-323. Penalties -- criminal -- civil.

Part 4 -- Miscellaneous Provisions

- 37-51-401. Action for compensation limited to licensed broker or salesperson.

Part 5 -- Recovery Account

- 37-51-501. Real estate recovery account established -- minimum balance -- interest.
- 37-51-502. Initial licensure and additional assessment.
- 37-51-503. Claims against fund -- orders for payment.
- 37-51-504. Form of application.
- 37-51-505. Motion to dismiss application.
- 37-51-506. Hearing on application.
- 37-51-507. Payment from account.
- 37-51-508. Limitation of payment -- pro rata distribution.
- 37-51-509. Claims satisfied in order of filing.
- 37-51-510. Deposits by board.
- 37-51-511. Subrogation rights of board.
- 37-51-512. Other disciplinary powers unimpaired -- effect of repayment to fund.

Part 6 -- Licensure of Property Managers

- 37-51-601. License required to manage property.
- 37-51-602. Definition of property management -- exemptions from application.
- 37-51-603. Qualification of property manager applicants -- examination -- form of licenses.
- 37-51-604. Repealed.
- 37-51-605. Property manager's office -- notice of change of address.
- 37-51-606. Repealed.
- 37-51-607. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees.
- 37-51-608. Penalties -- criminal -- civil.

Chapter Cross-References

Licensed broker -- exemption from regulation of escrow business, 32-7-103.

Part 1

General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(1).

37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Account" means the real estate recovery account established in 37-51-501.
- (2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:
 - (i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or
 - (ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.
- (b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.
- (3) "Board" means the board of realty regulation provided for in 2-15-1757.
- (4) "Broker" includes an individual who:
 - (a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;
 - (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;
 - (c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;
 - (d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;
 - (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;
 - (f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or
 - (g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).
- (5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.
- (6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 688, L. 1985; amd. Sec. 1, Ch. 314, L. 1989; amd. Sec. 1, Ch. 125, L. 1991; amd. Sec. 1, Ch. 142, L. 1993; amd. Sec. 1, Ch. 565, L. 1995; amd. Sec. 144, Ch. 483, L. 2001; amd. Sec. 34, Ch. 492, L. 2001.

Cross-References

Real property defined, 70-15-101.

37-51-103. Exemptions. (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as specified in this section, must identify the person performing any of the acts as a real estate broker or a real estate salesperson. The provisions of this chapter do not:

(a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) include in any way the services rendered by any attorney at law in the performance of the attorney's duties;

(d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate in a probate matter;

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States; or

(i) apply to a person performing any act with respect to the following types of land transactions:

(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;

(ii) condemnations; or

(iii) governmental or tribal permits.

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926; amd. Sec. 1, Ch. 180, L. 1989; amd. Sec. 2, Ch. 314, L. 1989; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 251, L. 1997.

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.

37-51-105. Sexual or violent offender registration information -- responsibility of broker or salesperson. The responsibility of a broker or salesperson with respect to sexual or violent offender registration information maintained by a governmental entity under Title 46, chapter 23, part 5, is limited to disclosure of:

- (1) the fact that the information may be maintained and by whom; and
- (2) the actual knowledge, if any, that the broker or salesperson has of sexual or violent offender registration information that pertains to the property in question.

History: En. Sec. 1, Ch. 99, L. 1999.

Part 2

Board of Realty Regulation

Part Cross-References

- Right to know, Art. II, sec. 9, Mont. Const.
- Seal defined, 1-4-201.
- Public records, Title 2, ch. 6.
- Allocation of boards for administrative purposes, 2-15-121.
- Quasi-judicial boards, 2-15-124.
- Board established, 2-15-1757.
- Entries in official books and records prima facie evidence, 26-1-605.
- Entry made by officer or Board prima facie evidence, 26-1-606.
- Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).
- Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).
- Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).
- Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
- Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-201. Chairman -- seal -- records -- prohibition on membership in real estate associations. (1) The members of the board shall elect a chairman from among their number.

(2) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated

by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department shall keep a record of proceedings, transactions, communications, and official acts of the board; be custodian of the records of the board; and cause to be performed other duties as the board, on the written request of two or more members of the board or at other times as the chairman in his discretion, considers necessary.

(4) Neither the chairman nor an employee of the department hired to provide services to the board may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: (1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1.

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943; amd. Sec. 1, Ch. 269, L. 1985; amd. Sec. 104, Ch. 429, L. 1995; amd. Sec. 10, Ch. 375, L. 2003; amd. Sec. 101, Ch. 467, L. 2005.

37-51-205. Compensation of members -- expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.

37-51-206. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944; amd. Sec. 1, Ch. 277, L. 1983.

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: En. Sec. 5, Ch. 497, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 1, Ch. 515, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-51-209. Executive secretary -- hiring and duties. The department may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

History: En. Sec. 1, Ch. 270, L. 1991; amd. Sec. 145, Ch. 483, L. 2001; amd. Sec. 35, Ch. 492, L. 2001.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt and enforce licensing and certification rules and to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review -- record access, 37-1-135.

Disciplinary authority of boards -- injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-51-301. License required -- limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3); amd. Sec. 93, Ch. 370, L. 1987; amd. Sec. 1, Ch. 259, L. 1989; amd. Sec. 6, Ch. 565, L. 1995.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-51-302. Broker or salesperson license -- qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981; amd. Sec. 2, Ch. 269, L. 1985; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 36, Ch. 492, L. 2001.

37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is pending shall satisfactorily pass an examination.

(2) (a) The examination for a salesperson's license must include subject portions that the board determines by rule to be appropriate.

(b) If the applicant passes one subject portion of the examination, the applicant is not required to repeat that portion of the examination if the applicant passes the remaining portion within 12 months.

(3) The examination for a broker's license must be of a more exacting nature and scope and more stringent than the examination for a salesperson's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 7, Ch. 196, L. 2003; amd. Sec. 102, Ch. 467, L. 2005.

37-51-304. Repealed. Sec. 15, Ch. 688, L. 1985.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.

37-51-305. License -- delivery -- display -- pocket card. (1) A license must bear the seal of the board.

(2) The license of a real estate salesperson must be delivered or mailed to the real estate broker with whom the real estate salesperson is associated and must be kept in the custody and control of the broker.

(3) A broker shall display the broker's own license conspicuously in the broker's place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period for which fees have been paid and, on real estate salesperson's cards only, the name and address of the broker with whom the real estate salesperson is associated.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 103, Ch. 467, L. 2005.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons -- consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936; amd. Sec. 1, Ch. 11, L. 1991; amd. Sec. 105, Ch. 429, L. 1995; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 170, L. 1999.

Cross-References

Rules for determining residency, 1-1-215.

37-51-307. Repealed. Sec. 13, Ch. 375, L. 2003.

History: En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.

37-51-308. Broker's office -- notice to department of change of address. (1)

A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesperson associated or under contract with the broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of this office and paying the required fee, whereupon a license for the new location must be issued for the unexpired period.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995.

37-51-309. Broker -- salesperson -- personal transactions of salesperson -- notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one licensed broker or perform services for a broker other than the one designated on the license issued to the salesperson.

(2) When a licensed salesperson desires to change association or contractual relationship from one licensed broker to another, the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued. A salesperson may not directly or indirectly work for or with a broker until the salesperson has been issued a license to work for or with that broker. On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's broker, who shall return it to the department for cancellation.

(3) Only one license may be issued to a salesperson to be in effect at one time.

(4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal transactions, and the provisions of this chapter do not require a

broker to exercise any supervision or provide any training for a salesperson with respect to personal transactions of the salesperson.

(b) A broker is not responsible or liable for the personal transactions of a salesperson.

(c) Prior to entering into a personal transaction, a salesperson shall disclose in writing to the other party that the transaction is a personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's broker or real estate firm.

(5) For the purposes of this part, "personal transaction" includes the following:

(a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

(b) the leasing or renting of real property owned by the salesperson.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 294, L. 2001; amd. Sec. 37, Ch. 492, L. 2001.

37-51-310. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3); amd. Sec. 1, Ch. 275, L. 1985; amd. Sec. 1, Ch. 306, L. 1987; amd. Sec. 45, Ch. 492, L. 1997; amd. Sec. 2, Ch. 170, L. 1999; amd. Sec. 48, Ch. 271, L. 2003.

37-51-311. Fees -- deposit of fees. The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 688, L. 1985; amd. Sec. 106, Ch. 429, L. 1995.

Cross-References

Recovery account assessment fee, 37-51-502.

37-51-312. No taxation by municipality. (1) A license fee or license tax may not be imposed on a real estate broker or salesperson as a condition to the practice of the broker's or salesperson's profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

(2) This section does not prohibit a municipality or other political subdivision of the state from imposing a general business license fee or general business license tax on an establishment as a condition of conducting business in the municipality's or other political subdivision's jurisdiction.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4); amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 400, L. 2005.

37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller;
(b) obey promptly and efficiently all lawful instructions of the seller;
(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(9) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

- (i) completion of performance by the agent;
- (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or
- (iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(10) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

- (a) to account for all money and property of the principal;
- (b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:
 - (i) subsequent conduct by the principal that authorizes disclosure;
 - (ii) disclosure required by law or to prevent the commission of a crime;
 - (iii) the information being disclosed by someone other than the broker or salesperson; and
 - (iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(11) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

History: En. Sec. 3, Ch. 565, L. 1995; amd. Sec. 3, Ch. 170, L. 1999; amd. Sec. 1, Ch. 389, L. 2005.

37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

- (a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.
- (b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

- (a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in

subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) A broker or salesperson, while managing properties for owners, shall disclose to all customers and clients the contractual relationship of the broker or salesperson.

(9) When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies with subsection (8) must be construed as a sufficient disclosure of the contractual relationship.

(10) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

(11) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.

History: En. Sec. 4, Ch. 565, L. 1995; amd. Sec. 4, Ch. 170, L. 1999; amd. Sec. 2, Ch. 389, L. 2005.

37-51-315. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

(a) the party has actual knowledge of the misrepresentation; or

(b) the agent or subagent is repeating a misrepresentation made by the party.

(2) A broker is not liable for a misrepresentation made by the broker's subagent unless:

(a) the broker has actual knowledge of the misrepresentation;

(b) the subagent making the misrepresentation is an employee of the broker and not an independent contractor; or

(c) a broker or subagent is repeating a misrepresentation made by the broker.

(3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation.

History: En. Sec. 5, Ch. 565, L. 1995; amd. Sec. 38, Ch. 492, L. 2001.

37-51-316 through 37-51-320 reserved.

37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds. (1) The board may on its own motion and shall on the sworn complaint in

writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson;

(t) conviction of a felony;

(u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners; or

(v) failing to disclose to all customers and clients, including owners and tenants, the broker's or salesperson's contractual relationship while managing properties for owners.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1).

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979; amd. Sec. 1, Ch. 246, L. 1993; amd. Sec. 2, Ch. 565, L. 1995; amd. Sec. 5, Ch. 170, L. 1999; amd. Sec. 2, Ch. 294, L. 2001; amd. Sec. 3, Ch. 389, L. 2005.

37-51-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

37-51-323. Penalties -- criminal -- civil. (1) Any individual acting as a broker or salesperson without a license or while his license is suspended or revoked or any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money or the equivalent thereof as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940; amd. Sec. 6, Ch. 565, L. 1995.

Part 4

Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesperson. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesperson within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesperson or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941; amd. Sec. 6, Ch. 565, L. 1995.

Part 5

Recovery Account

37-51-501. Real estate recovery account established -- minimum balance -- interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of

claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in 17-7-502.

(2) The board shall maintain a minimum balance of \$100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

History: En. Sec. 3, Ch. 688, L. 1985.

37-51-502. Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of \$35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than \$100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of \$100,000.

History: En. Sec. 4, Ch. 688, L. 1985.

37-51-503. Claims against fund -- orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction occurring on or after July 1, 1985, for which a license is required under this chapter, he may after executing on such final judgment file an application, in accordance with this section and 37-51-504, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) No application or order for payment from the account may be made for:

(a) a judgment which has been satisfied;

(b) any amount in excess of \$25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service.

History: En. Sec. 5, Ch. 688, L. 1985.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

37-51-504. Form of application. The person making application for payment from the account must show in the application:

(1) that he is not the spouse of the judgment debtor or the personal representative of such spouse;

(2) that he has obtained a judgment which satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that he has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14, respectively;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that he has diligently pursued his remedies of execution and proceedings in aid of execution against any other person against whom he has a judgment as a result of the transaction for which he seeks recovery from the account.

History: En. Sec. 6, Ch. 688, L. 1985.

37-51-505. Motion to dismiss application. The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under 37-51-503 and 37-51-504. The board shall give the applicant at least 10 days' written notice of any motion to dismiss.

History: En. Sec. 7, Ch. 688, L. 1985.

37-51-506. Hearing on application. (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee.

History: En. Sec. 8, Ch. 688, L. 1985.

37-51-507. Payment from account. If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of this part.

History: En. Sec. 9, Ch. 688, L. 1985.

37-51-508. Limitation of payment -- pro rata distribution. (1) The liability of the account may not exceed \$25,000 for any one licensee until that licensee has repaid the account. If the \$25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the \$25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed. Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board.

History: En. Sec. 10, Ch. 688, L. 1985.

37-51-509. Claims satisfied in order of filing. If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of \$25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to 37-51-503. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim.

History: En. Sec. 11, Ch. 688, L. 1985.

37-51-510. Deposits by board. Money received by the board under 37-51-511 must be deposited in the account and allocated exclusively for the purposes provided in this part.

History: En. Sec. 12, Ch. 688, L. 1985.

37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the

extent of the amount so paid and the judgment creditor is considered to have assigned to the board all of his right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account.

History: En. Sec. 13, Ch. 688, L. 1985.

37-51-512. Other disciplinary powers unimpaired -- effect of repayment to fund. Nothing contained in this part limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter.

History: En. Sec. 14, Ch. 688, L. 1985.

Part 6

Licensure of Property Managers

Part Cross-References

Landlord-tenant laws, Title 70, ch. 24 through 26.

37-51-601. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

History: En. Sec. 2, Ch. 142, L. 1993.

37-51-602. Definition of property management -- exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

- (a) a relative of the owner of the real estate, defined as follows:
 - (i) a son or daughter of the property owner or a descendant of either;
 - (ii) a stepson or stepdaughter of the property owner;
 - (iii) a brother, sister, stepbrother, or stepsister of the property owner;
 - (iv) the father or mother of the property owner or the ancestor of either;
 - (v) a stepfather or stepmother of the property owner;
 - (vi) a son or daughter of a brother or sister of the property owner;

- (vii) a brother or sister of the father or mother of the property owner;
 - (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or
 - (ix) the spouse of the property owner;
 - (b) a person who leases no more than four residential real estate units;
 - (c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.
 - (d) an attorney at law in the performance of duties as an attorney;
 - (e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;
 - (f) an officer of the state or any of its political subdivisions in the conduct of official duties;
 - (g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;
 - (h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;
 - (i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or
 - (j) a person employed on a salaried basis by only one person.
- (2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under the supervision of a real estate broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson and without holding a separate property manager's license.

History: En. Sec. 3, Ch. 142, L. 1993; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 4, Ch. 389, L. 2005.

37-51-603. Qualification of property manager applicants -- examination -- form of licenses. (1) The board by rule shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

- (2) (a) The board shall require an applicant for a property manager license to:
- (i) apply for licensure to the department;
 - (ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(4) The license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(5) The department shall prepare and deliver to the licensee a pocket card in a form and at times prescribed by the board.

History: En. Sec. 4, Ch. 142, L. 1993; amd. Sec. 46, Ch. 492, L. 1997; amd. Sec. 104, Ch. 467, L. 2005.

37-51-604. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 142, L. 1993.

37-51-605. Property manager's office -- notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the license. If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.

History: En. Sec. 6, Ch. 142, L. 1993.

37-51-606. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 7, Ch. 142, L. 1993.

37-51-607. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by this part.

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

History: En. Sec. 8, Ch. 142, L. 1993.

37-51-608. Penalties -- criminal -- civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of this part is

guilty of a misdemeanor. For a first conviction, the person shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of this part, the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

History: En. Sec. 9, Ch. 142, L. 1993.

**TITLE 37
CHAPTER 53
PART 1 - 5**

Part 1 -- General

- 37-53-101. Short title.
- 37-53-102. Definitions.
- 37-53-103. Repealed.
- 37-53-104. Rulemaking authority.

Part 2 -- Registration of Timeshare Offerings

- 37-53-201. Registration of timeshare offering required.
- 37-53-202. Application for registration.
- 37-53-203. Registration period -- renewal.
- 37-53-204. Alternative filing documents.
- 37-53-205. Exemption from registration.
- 37-53-206 through 37-53-210 reserved.
- 37-53-211. Approval or disapproval of application or registration.
- 37-53-212. Conditions upon registration.
- 37-53-213. Waiver of liability.
- 37-53-214. Approval of advertising.

Part 3 -- Licensure of Brokers and Salespersons

- 37-53-301. Licensure of timeshare brokers and timeshare salespersons.
- 37-53-302. Denial, suspension, or revocation of license or application.

- 37-53-303. Disclosure document.
- 37-53-304. Disclosure to purchaser -- cancellation of agreement.
- 37-53-305. Transfer of developer's interest.
- 37-53-306. Good faith requirement -- prohibited provisions.
- 37-53-307. Illegal practices.
- 37-53-308. Civil liability.

Part 4 -- Promotional Offers

- 37-53-401. Prize and gift promotional offers -- filing.
- 37-53-402. Prize and gift promotional offer advertising content.
- 37-53-403. Awarding of gifts and prizes.

Part 5 -- Enforcement

- 37-53-501. Repealed.
- 37-53-502. Repealed.
- 37-53-503. Repealed.
- 37-53-504. Attorney general to act as attorney for board.
- 37-53-505. Injunctions.
- 37-53-506. Criminal proceedings.

Chapter Cross-References

Unit Ownership Act -- condominiums, Title 70, ch. 23.

Part 1

General

37-53-101. Short title. This chapter may be cited as the "Montana Timeshare Act".

History: En. Sec. 1, Ch. 444, L. 1987.

37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(3) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(4) "Board" means the board of realty regulation provided for in 2-15-1757.

(5) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling his own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor or assignee of a person referred to in subsection (5)(a) or (5)(b).

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare. An offer is made in this state if the offer originates in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.

(10) "Project" means the real property or real estate, that must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(11) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of another person, by any means, of the review or acquisition of a timeshare interval.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.

(16) "Timeshare expenses" means expenditures, fees, charges, or liabilities:

(a) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and

(b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve. The term does not include purchase money payable for timeshares.

(17) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(18) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating such use and occupancy rights between similar users.

(19) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(21) "Timeshare unit" or "unit" means the real property or portion thereof in which the timeshare exists and that is designated for separate use, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing.

History: En. Sec. 2, Ch. 444, L. 1987.

37-53-103. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 29, Ch. 444, L. 1987; amd. Sec. 49, Ch. 271, L. 2003.

37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

(1) qualifications for applicants and any additional applicant information that must be supplied;

(2) documents acceptable in lieu of registration documents under 37-53-204;

(3) conditions that may be placed upon registration under 37-53-212;

(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker;

(5) additional information included in a disclosure document; and

(6) fees established pursuant to 37-1-134.

History: En. Sec. 30, Ch. 444, L. 1987; amd. Sec. 105, Ch. 467, L. 2005.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Registration of Timeshare Offerings

37-53-201. Registration of timeshare offering required. A timeshare offering may not be advertised, offered, or sold in this state unless it is registered as provided in this chapter.

History: En. Sec. 3, Ch. 444, L. 1987.

37-53-202. Application for registration. An application for registration of a timeshare offering must be in a form developed by the board in conjunction with input from the timeshare industry. The application must be signed by the applicant and accompanied by the registration fee. Except as provided in 37-53-204, the application must contain:

(1) audited financial statements showing the financial condition of the developer and any affiliate, including:

(a) a balance sheet dated within 4 months before the filing of the application for registration; and

(b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet;

(2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period;

(4) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;

(6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(7) copies of all timeshare instruments;

(8) a copy of the disclosure document provided for in 37-53-303, signed by the applicant;

(9) an irrevocable consent to service of process signed by the applicant; and

(10) any other information that the board may by rule require in the protection of the public interest or necessary to describe the risks involved.

History: En. Sec. 4, Ch. 444, L. 1987; amd. Sec. 1, Ch. 12, L. 1993.

37-53-203. Registration period -- renewal. (1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.

(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.

(3) If a materially adverse change in the condition of the developer or an affiliate occurs during any year, an amendment to the documents filed under 37-53-202 must be filed, along with the prescribed fee.

(4) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 5, Ch. 444, L. 1987; amd. Sec. 50, Ch. 271, L. 2003.

37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept:

(a) a disclosure document filed with an agency of the United States or any other state; or

(b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state.

(2) The board shall prescribe by rule those documents acceptable under subsection (1).

History: En. Sec. 6, Ch. 444, L. 1987.

37-53-205. Exemption from registration. The registration requirements of this chapter do not apply to:

(1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;

(2) a gratuitous transfer of a timeshare;

(3) a sale under court order;

(4) a sale by any government or a governmental agency;

(5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(6) a sale of a project or all timeshare units therein to any one purchaser.

History: En. Sec. 7, Ch. 444, L. 1987.

37-53-206 through 37-53-210 reserved.

37-53-211. Approval or disapproval of application or registration. (1) Registration of a timeshare offering is effective upon written notice of approval of the application by the board or upon the passage of 30 calendar days after filing of a completed application if not approved or denied prior to that time.

(2) The board may issue an order denying, suspending, or revoking any application or registration if the board finds that the order is in the public interest and that:

(a) the application or registration is incomplete or contains a statement that is false or misleading with respect to any material fact;

(b) any provision of this chapter or any rule or order lawfully issued under this chapter has been violated;

(c) the activities of the developer include or would include activities that are illegal; or

(d) the timeshare offering has worked or would tend to work a fraud on purchasers.

(3) The board shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within 20 days of receipt of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the board modifies or vacates it.

History: En. Sec. 8, Ch. 444, L. 1987; amd. Sec. 107, Ch. 429, L. 1995.

37-53-212. Conditions upon registration. To protect the public interest, the board may require as a condition of registration that the registrant establish an independent trust, escrow, or similar arrangement that assures a purchaser quiet enjoyment of the timeshare unit.

History: En. Sec. 9, Ch. 444, L. 1987.

Cross-References

Trust Code, Title 72, ch. 33 through 36.

37-53-213. Waiver of liability. The fact that an application for registration has been filed or that a timeshare offering has been registered does not constitute a finding by the board that any document filed under this chapter is complete, true, and not misleading. The filing or registration does not mean that the board has given approval to, recommended, or determined the merits or qualifications of any person, timeshare, or transaction.

History: En. Sec. 10, Ch. 444, L. 1987.

37-53-214. Approval of advertising. (1) No person may publish an advertisement in this state offering a timeshare that is subject to the registration

requirements of 37-53-201 unless a true copy of the advertisement has first been filed in the office of the board at least 7 days before publication or such other period as the board may establish by rule.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith without reasonable knowledge of its violation of any provision of this chapter.

History: En. Sec. 11, Ch. 444, L. 1987.

Part 3

Licensure of Brokers and Salespersons

37-53-301. Licensure of timeshare brokers and timeshare salespersons.

(1) (a) A person offering timeshare units for his own account or for the account of others must be licensed as a timeshare salesperson or timeshare broker unless the offering is exempt under 37-53-205. Licensure may be obtained:

(i) upon completion of an application and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter; and

(ii) upon successful completion of a course of education related to the timeshare industry that has been approved by the board.

(b) The board shall then issue a certificate of completion to the applicant.

(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant. No license other than that issued pursuant to Title 37, chapter 51, is required.

History: En. Sec. 12, Ch. 444, L. 1987.

37-53-302. Denial, suspension, or revocation of license or application. The board may by an order deny, suspend, or revoke a timeshare salesperson's or timeshare broker's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure and personal disclosure statement as a timeshare salesperson or timeshare broker that is incomplete in any material respect or contains any statement that is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has violated or failed to comply with any provision of this chapter, rules adopted under this chapter, or Title 37, chapter 51;

(3) has been convicted of a felony involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices in the timeshare business; or

(6) has not complied with any condition imposed by the board or is not qualified on the basis of knowledge of the timeshare industry or this chapter.

History: En. Sec. 13, Ch. 444, L. 1987; amd. Sec. 108, Ch. 429, L. 1995.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-303. Disclosure document. A person who offers or sells a timeshare shall provide the prospective purchaser with a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The disclosure document must include:

(1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) the location of the timeshare property;

(3) a general description of the timeshare property and the timeshare units;

(4) a list of all units offered by the promoter in the same project, including:

(a) the types, current prices, and number of units;

(b) the types and durations of the timeshares;

(c) the maximum number of units that may become part of the timeshare property;

(d) a statement of the maximum number of timeshares that may be created or a statement that there is no maximum;

(5) a description of the types of financing offered by the promoter;

(6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;

(7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument;

(8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge, and the manner, if any, whereby the developer may change the managing entity;

(9) a true copy of the current or projected budget of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(10) a statement in boldface type on the cover page of the disclosure document that, within 3 days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the

purchase of a timeshare from a developer or salesperson and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;

(11) any restrictions on transfers of a timeshare or portion thereof;

(12) a description of any insurance coverage provided for the benefit of timeshare owners by the managing entity or the timeshare owners' association;

(13) a full and accurate disclosure of whether the timeshare owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(14) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial and background information required by 37-53-202.

History: En. Sec. 14, Ch. 444, L. 1987.

37-53-304. Disclosure to purchaser -- cancellation of agreement. The developer or any person offering a timeshare shall provide a prospective purchaser with a copy of the disclosure document described in 37-53-303 before the execution of any agreement for the purchase of a timeshare. A purchaser may, within 3 days following receipt of a disclosure document or signing of a timeshare purchase agreement, whichever is later, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or promoter's agent either by certified mail or personal delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for 3 days thereafter. The provisions of this section may not be waived.

History: En. Sec. 15, Ch. 444, L. 1987.

37-53-305. Transfer of developer's interest. A developer may not sell, lease, assign, or otherwise transfer his interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with this chapter. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made.

History: En. Sec. 16, Ch. 444, L. 1987.

37-53-306. Good faith requirement -- prohibited provisions. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A developer may not require a purchaser to agree to a release, assignment, novation, waiver, or any other provision that relieves a person from a duty imposed by this chapter.

(3) Any provision in a timeshare instrument that designates jurisdiction or venue in a forum outside this state or the state or other jurisdiction where the project is located is void with respect to any cause of action that is enforceable in this state.

History: En. Sec. 17, Ch. 444, L. 1987.

37-53-307. Illegal practices. (1) It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

(a) make any false or misleading statement of a material fact or to omit a material fact;

(b) employ any device, scheme, or artifice to defraud;

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(d) file or cause to be filed with the board any document that contains false or misleading information; or

(e) violate any provision of this chapter or a rule adopted under this chapter or any applicable provision of Title 37, chapter 51.

(2) A violation of this section is a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 18, Ch. 444, L. 1987.

Cross-References

Fraud defined, 28-2-404 through 28-2-406.

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-308. Civil liability. Any person who offers, sells, or materially aids in the offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare, who may sue to recover the consideration paid for the timeshare, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare or for damages if the person no longer owns the timeshare.

History: En. Sec. 19, Ch. 444, L. 1987.

Cross-References

Legal interest, 31-1-106.

Part 4

Promotional Offers

Part Cross-References

Consumer protection -- unlawful practices, 30-14-103.

Unfair competition and deception, 30-14-104.

37-53-401. Prize and gift promotional offers -- filing. (1) A separate filing for each prize and gift promotional offer to be used in the sale of timeshare intervals must be made with the board at least 14 days prior to the use of such offer by the developer. No advertising material related to a prize and gift promotional offer may be distributed unless it is first filed with the board. If the board determines that any prize or gift has been misrepresented by the developer and if upon notification thereof the developer fails to correct such misrepresentation, the board may revoke or suspend the application or registration of the developer.

(2) Each filing of a prize and gift promotional offer with the board must include, when applicable:

(a) a copy of all advertising material to be used in connection with the prize and gift promotional offer;

(b) the name, address, and telephone number, including area code, of the supplier or manufacturer from whom each prize, gift, or other item is obtained;

(c) the manufacturer's model number or other description of such item;

(d) the information on which the developer relies in determining the verifiable retail value;

(e) the name, address, and telephone number, including area code, of the promotional entity responsible for overseeing and operating the prize and gift promotional offer; and

(f) the name and address of the registered agent in the state of the promotional entity for service of process purposes.

(3) Each developer shall file with the board by March 1 of each year the name, address, and telephone number, including area code, of each person who actually received a prize, gift, or other item that had a verifiable retail value or manufacturer's suggested retail price in excess of \$150.

History: En. Sec. 20, Ch. 444, L. 1987.

37-53-402. Prize and gift promotional offer advertising content. All advertising material to be distributed in connection with a prize and gift promotional offer must contain:

(1) a description of the prize, gift, or other item that the prospective purchaser will actually receive, including the manufacturer's retail price or, if none is available, the verifiable retail value;

(2) all rules, terms, requirements, and preconditions that must be fulfilled or met before a prospective purchaser may claim any prize, gift, or other item involved in the prize and gift promotional plan, including whether the prospective purchaser is required to attend a sales presentation in order to receive the prize, gift, or other item;

(3) the date the offer expires;

- (4) a statement of the number of items that will be awarded if the number of prizes, gifts, or other items to be awarded is limited; and
- (5) the method by which prizes, gifts, or other items are to be awarded.

History: En. Sec. 21, Ch. 444, L. 1987.

37-53-403. Awarding of gifts and prizes. (1) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day he appears to claim it, whether or not he purchases a timeshare interval. If the prize is not available it must be presented or mailed at the developer's expense, postage prepaid, within 30 days thereafter.

(2) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer must be awarded by the date referenced in the advertising material used in connection with such offer.

History: En. Sec. 22, Ch. 444, L. 1987.

Part 5

Enforcement

37-53-501. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 444, L. 1987.

37-53-502. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 24, Ch. 444, L. 1987.

37-53-503. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 25, Ch. 444, L. 1987.

37-53-504. Attorney general to act as attorney for board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity must be paid out of board money in the state special revenue fund.

History: En. Sec. 26, Ch. 444, L. 1987.

37-53-505. Injunctions. (1) The attorney general, in the name of the state or the board, may bring an action to enjoin a person from violating a provision of this chapter.

Upon a proper showing, the district court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional order of judgment necessary to restore to a person any interest in money or property, real or personal, that may have been acquired by an act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney fee.

(2) The district court issuing an injunction shall retain jurisdiction. A person who violates the terms of an injunction shall pay a civil penalty as set by the court, but not to exceed \$25,000.

(3) The attorney general, in the name of the state or the board, may apply to the district court to appoint a receiver or conservator for any person or the assets of any person who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

History: En. Sec. 27, Ch. 444, L. 1987.

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

37-53-506. Criminal proceedings. The board may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney, who may institute appropriate criminal proceedings.

History: En. Sec. 28, Ch. 444, L. 1987.